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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,736	03/18/2004	David Frederick Martinez	ATSER-007C1	5373

7590
David F. Martinez
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1150 Richcrest Drive
Houston, TX 77060

06/10/2005

EXAMINER

DAVIS, OCTAVIA L

ART UNIT	PAPER NUMBER
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2855

DATE MAILED: 06/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

54

Office Action Summary

Application No.

10/808,736

Applicant(s)

MARTINEZ ET AL.

Examiner

Octavia Davis

Art Unit

2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 March 2005.
 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-20 is/are rejected.
 7) ☐ Claim(s) _____ is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
 10) ☒ The drawing(s) filed on 18 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.
 4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) ☐ Notice of Informal Patent Application (PTO-152)
 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1 – 3 and 6 – 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Cox et al (2002/0191481).

Regarding claims 1 and 9, Cox et al disclose a portable plant for mixing asphalt and rubber comprising running one or more tests on the mix designs using computer controlled equipment, digitally collecting data for each run using the equipment and selecting an optimum mix based on the gyration data (See Page 3, Section 0026).

Regarding claims 2 and 6, a communication port is turned on and off using a CPU 56 (See Page 2, Section 0023 and Page 4, lines 27 – 32).

Regarding claim 3, an operating mode is selected (See Page 3, lines 32 – 38).

Regarding claim 7, a second specimen is loaded (See Page 3, Section 0028).

Regarding claim 8, data is uploaded to a computer (See Pages 2 and 3, Section 0025 and Page 4, lines 51 – 55).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4, 5 and 10 - 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cox et al in view of Bahia et al.

Regarding claims 4, 5, 10, 11, 14 and 18, Cox et al disclose all of the limitations of these claims except that the equipment is a gyratory compactor, capturing a specimen height for each gyration from the compactor and turning off the compactor upon reaching a gyration value.

However, Bahia et al disclose an apparatus and method for determining testing material performance comprising a gyratory compactor 10 including a frame 14 which supports a cabinet 18, the cabinet including an upper cabinet portion 26, a control panel 38 which controls the operation of the compactor 10 and a stop button 42 mounted on the upper portion and a computer control

system 74 being preprogrammable with testing parameters including test specimen height (See Col. 6, lines 37 – 67), the computer being coupled to the compactor (See Fig. 4, See Col. 8, lines 43 – 48).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Cox et al according to the teachings of Bahia et al for the purpose of, providing an apparatus and method for determining the shear resistance of a paving material test specimen so as to better predict the compactability, serviceability and potential resistance to wear or rutting of a relating paving material design (See Bahia et al, Col. 3, lines 52 – 61).

Regarding claims 12, 15 and 16, in Cox et al, the code turns the communication port on and off (See Page 2, Section 0023 and Page 4, lines 27 – 32).

Regarding claim 13, in Cox et al, the code selects an operating mode (See Page 3, lines 32 – 38).

Regarding claims 17 and 20, Cox et al disclose all of the limitations of these claims except for teachings that the compactor receives one or more specimen and the mix comprises a Superpave mix. However, in Bahia et al, the compactor receives one or more specimen 46 and the mix comprises a Superpave mix (See Col. 14, lines 11 – 53).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Cox et al according to the teachings of Bahia et al for the purpose of, effective measuring the overall frictional resistance of asphalt mixtures to utilize the frictional resistance calculation in volumetric tests to indicate stability of an asphalt mixture (See Bahia et al, Col. 14, lines 48 – 61).

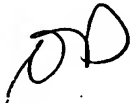
Regarding claim 19, Cox et al disclose all of the limitations of these claims except for a teaching that the code turns on the compactor. However, in Bahia et al, at the push of a button the computer initiates the test routine (See Cols. 6 and 7, lines 67 and 1 – 5).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Cox et al according to the teachings of Bahia et al for the purpose of, initiating the gyration and compaction process to measure the densification characteristics of the test specimen (See Bahia et al, Col. 7, lines 5 – 16).

Conclusion

6. Any inquiry concerning this communication should be directed to Examiner Octavia Davis at telephone number (571) 272 - 2176. The examiner can normally be reached on Monday - Thursdays (9:00 - 5:00), Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz, can be reached on (571) 272 - 2180. The fax phone number for the organization where this application where this application or proceeding is assigned is (703) 872 – 9306.



OD/2855

6/6/05